

November 27, 2001

DOCKET TO DETERMINE THE COMPLIANCE OF BELL SOUTH TELECOMMUNICATIONS, INC.'S OPERATIONS SUPPORT SYSTEMS WITH STATE AND FEDERAL REGULATIONS

DOCKET NO.
01-00362

**ORDER GRANTING BELL SOUTH TELECOMMUNICATION, INC.'S
MOTION FOR RECONSIDERATION**

This matter is before the Pre-Hearing Officer on the *Motion for Reconsideration* filed by BellSouth Telecommunications, Inc. (“BellSouth”) on November 20, 2001.

The Pre-Hearing Officer issued the *Order Amending and Clarifying Order Resolving Discovery Disputes* on October 26, 2001. This *Order* directed the parties to file, no later than 3:00 p.m., Friday, November 9, 2001, a complete list of the witnesses they intend to present at the Hearing in this docket, listed in the order of their presentation.

On October 22, 2001, BellSouth filed the Direct Testimony of Milton McElroy, Jr., BellSouth's Director of Interconnection Services. As exhibits to this testimony, BellSouth attached a Report on Georgia's Operations Support System ("OSS") produced by KPMG Peat Marwick and a Report and "Attestation" as to the Regionality of BellSouth's OSS conducted by PriceWaterhouseCoopers ("PWC") at BellSouth's request. Robert L. Lattimore, a PWC accountant, provided the two-page attestation of

regionality.

On November 8, 2001, a Pre-Hearing Conference was held in which the Pre-Hearing Officer informed BellSouth that basic principles of fairness dictate that parties be afforded an opportunity to contest and rebut the facts or materials that inform any initial or final order issued by the Tennessee Regulatory Authority (“Authority” or “TRA”). Thus, the Pre-Hearing Officer determined that documents with authors who are not subject to cross-examination would not be admitted into evidence at the Hearing.

This ruling was not issued in a vacuum. Throughout these proceedings, the Pre-Hearing Officer has repeatedly informed BellSouth of the Directors’ intention to provide for the thorough cross-examination of witnesses and the need for all parties to produce informed witnesses who are capable of testifying about the documents being presented into evidence.¹

On November 9, 2001, BellSouth and AT&T Communications of the South Central States, Inc. (“AT&T”) and TCG MidSouth, Inc. (“TCG”) filed witness lists in response to those *Orders*. BellSouth’s witness list did not include any persons who participated in the preparation of the KPMG Report or the PWC Report. In addition, the witness list did not include the author of the regionality attestation, Robert Lattimore.

On November 14, 2001, the Pre-Hearing Officer issued the *Order Resolving Procedural Motions*. This *Order*, in pertinent part, excluded the Report on Georgia’s OSS completed by KPMG and the PWC Report and Attestation from the evidence in this proceeding because the witness list filed by BellSouth did not include the witnesses who

¹ *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.’s Operations Support Systems with State and Federal Regulations*, TRA Docket No. 01-00362 (Transcript from September 6, 2001 Pre-Hearing Conference) pp. 56-57; (Transcript from October 9, 2001 Pre-Hearing Conference) pp.

produced these documents. The Pre-Hearing Officer concluded that the admission of these documents in the absence of the parties' ability to cross-examine the witnesses who prepared them would violate due process.

BellSouth's Motion for Reconsideration

On November 20, 2001, BellSouth filed a *Motion for Reconsideration* of the Pre-Hearing Officer's October 14th Order. The *Motion for Reconsideration* seeks reconsideration of the decision to strike the two reports and the attestation on the grounds that Michael Weeks of KPMG and Robert Lattimore of PWC will be available to testify at the Hearing. BellSouth asserts that Mr. Weeks can appear on Monday, December 3, 2001 and Mr. Lattimore can appear on Tuesday December 4, 2001. In conjunction with its *Motion*, BellSouth filed a *Notice of Appearance* of these two witnesses that states that the *Notice* had the practical effect of amending its witness list.

AT&T and TCG filed a response to the *Motion for Reconsideration* on November 26, 2001, arguing that BellSouth's failure to comply with the deadlines established by the Pre-Hearing Officer's Orders has hampered the ability of AT&T and TCG to respond to BellSouth's case in an efficient and effective manner. AT&T and TCG also request the Authority to strike the redacted direct testimony of Milton McElroy because BellSouth failed to timely file the redacted testimony in compliance with the Pre-Hearing Officer's order on November 8, 2001, and that BellSouth took inconsistent positions on whether it intends to file such testimony. Notwithstanding these arguments, AT&T and TCG state that they defer to the Authority's judgment on the admission of the testimony of Michael Weeks, Robert Lattimore and the redacted direct testimony of Milton McElroy. Finally,

40-41, 44-47, 110-111; (Transcript from October 23, 2001 Authority Conference) p. 28; (Transcript from November 6, 2001 Authority Conference) p. 9.

AT&T and TCG ask the Authority to compel BellSouth to file a compliant Regionality Matrix, arguing that the matrix BellSouth filed is inadequate.

Having reviewed and considered BellSouth's *Motion for Reconsideration* and AT&T's response thereto, the Pre-Hearing Officer finds that the appearances of Michael Weeks and Robert Lattimore at the Hearing removes the due process concerns associated with the introduction of the two Reports and the Attestation. Further, the testimony of these witnesses will assist the Authority in rendering a decision in this case. Accordingly, the Pre-Hearing Officer vacates the decision to strike the Report on Georgia's OSS completed by KPMG and the PWC Report and Attestation. BellSouth is permitted to add Michael Weeks and Robert Lattimore its witness list. The Pre-Hearing Officer's decision in this regard does not bind the Authority to accept the limited proffer of Michael Weeks on December 3, 2001 and Robert Lattimore on December 4, 2001. It is the practice of this agency to require that all material witnesses be available for the entire hearing. BellSouth's *Notice of Appearance*, which purports to limit the timeframes in which Mr. Weeks and Mr. Lattimore will be available, cannot, in and of itself, change the foregoing practice.

Regarding Milton McElroy's redacted direct testimony, in their *Response*, AT&T and TCG limited their objection to its untimely filing and BellSouth's inconsistent position as to whether to file it. In light of the Pre-Hearing Officer's decision to admit the two Reports and the Attestation, the associated redacted direct testimony of Milton McElroy filed November 20, 2001 will also be admitted at the Hearing.

BellSouth shall file an amended witness list reflecting the order in which their witnesses will be presented at the Hearing no later than **12:00 p.m., Thursday,**

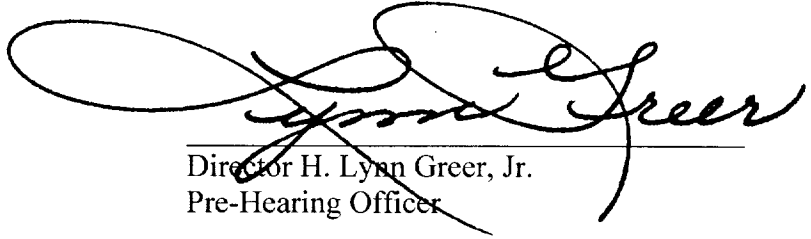
November 29, 2001. In light of the Pre-Hearing Officer's decision to allow these additional witnesses to testify, the other parties to this action may amend their witness lists and file supplemental rebuttal testimony, if they so desire, no later than **12:00 p.m., Friday, November 30, 2001.**

Turning to the request by AT&T and TCG that BellSouth be compelled to file a compliant regionality matrix, the Pre-Hearing Officer is of the opinion that the concerns expressed in their request should be addressed in BellSouth's response to the TRA's November 21, 2001 data request.


IT IS THEREFORE ORDERED THAT:

1. The *Motion for Reconsideration* filed by BellSouth on November 20, 2001 is granted to the extent that the portion of the *Order Resolving Procedural Motions* issued on November 14, 2001 striking the Report on Georgia's OSS completed by KPMG and the PWC Report and Attestation is hereby vacated.
2. BellSouth is directed to file an amended witness list reflecting the order in which it intends to present its witnesses, including the additional witnesses Michael Weeks and Robert Lattimore, no later than **12:00 p.m., Thursday, November 29, 2001.**
3. The other parties to this action may file revised witness lists and supplemental rebuttal testimony, if they so desire, no later than **12:00 p.m., Friday, November 30, 2001.**

4. The request by AT&T and TCG that BellSouth be compelled to file a compliant regionality matrix is held in abeyance.



Director H. Lynn Greer, Jr.
Pre-Hearing Officer



K. David Waddell, Executive Secretary